

shipped by Hallauer & Philips, Inc., from Webster, N. Y., on or about December 13, 1924, and transported from the State of New York into the State of Pennsylvania, and charging adulteration and misbranding in violation of the food and drugs act.

Adulteration of the article was alleged in the libel for the reason that a substance, excessive moisture, had been mixed and packed with and substituted wholly or in part for the said article.

Misbranding was alleged for the reason that the statement "Evaporated Apples," borne on the labels, was false and misleading and deceived and misled the purchaser, and for the further reason that it was offered for sale under the distinctive name of another article.

On February 2, 1926, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

R. W. DUNLAP, *Acting Secretary of Agriculture.*

**14119. Alleged adulteration of shell eggs. U. S. v. Fred B. Smith (Union Produce Co.). Tried to the court and a jury. Verdict of not guilty. (F. & D. No. 18467. I. S. No. 17827-v.)**

On June 28, 1924, the United States attorney for the Southern District of Iowa, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Fred B. Smith, trading as the Union Produce Co., Lorimor, Iowa, alleging shipment by said defendant, in violation of the food and drugs act, on or about July 30, 1923, from the State of Iowa into the State of Illinois, of a quantity of shell eggs which were adulterated.

Examination by the Bureau of Chemistry of this department of 10 half cases from the shipment showed that 338, or 18.7 per cent, were inedible eggs, consisting of black and mixed rots, blood rings, and moldy eggs.

Adulteration of the article was alleged in the information for the reason that it consisted in part of a filthy and decomposed and putrid animal substance.

On January 24, 1925, the case came on for trial before the court and a jury. After several hours deliberation on the evidence, the jury reported that it was unable to agree upon a verdict. On October 22, 1925, the case came on for retrial. After the introduction of evidence on behalf of the Government and the defendant, the court submitted the case to the jury with the following instructions (Reeves, D. J.):

"Gentlemen of the jury, at the conclusion of arguments of counsel in this case and after all the testimony has been introduced it becomes the duty of the court to charge you with the law applicable to the facts in the case. With the law of the case you have nothing to do, and with the facts of the case the court has nothing to do. It is your exclusive function to pass on all controversies of fact, and it is the exclusive function of the court to declare the law, and it is your duty to accept that declaration of the court as to the application of the law to the facts in the case. In your consideration of the facts the court will not attempt to infringe upon your purview of deciding the facts of the case. You should make up your minds as to the facts and return your verdict according to the facts, according to your judgment; and according to your judgment under the guidance of the facts and the extent of the facts and not favor any judgment the court may have in the matter. Anything the court may say is for your guidance in this case.

"Gentlemen, Congress has enacted the following statute with reference to interstate shipment of adulterated food: 'The introduction into any State or Territory or the District of Columbia from any other State or Territory or the District of Columbia, or from any foreign country, or shipment to any foreign country, of any article of food or drugs which is adulterated or misbranded within the meaning of this act is hereby prohibited; and any person who shall ship or deliver for shipment from any State or Territory or the District of Columbia to any other State or Territory or the District of Columbia, or to a foreign country, or who shall receive in any State or Territory or the District of Columbia from any other State or Territory or the District of Columbia, or foreign country, and having so received shall deliver, in original unbroken packages for pay or otherwise, or offer to deliver to any other person, any such article so adulterated or misbranded within the meaning of this act, or any person who shall sell or offer for sale in the District of Columbia or the Territories of the United States any such adulterated or

misbranded foods or drugs, or export or offer to export the same to any foreign country, shall be guilty of a misdemeanor.'

"Now, gentlemen, the indictment in this case charges that the defendant, on or about the thirtieth day of July, 1923, shipped or offered for shipment a certain number of cases of eggs containing adulterated eggs—that is to say, eggs that contained decomposed matter—that is, a putrid animal substance.

"If you should find on the evidence that on or about the thirtieth day of July, 1923, the defendant shipped or delivered for shipment in the city or Lorimor, in the State of Iowa, to the city of Chicago, in the State of Illinois, to Peterson Brothers, a number of cases containing adulterated eggs, that is to say, eggs that were moldy, partly rotten, as described in the evidence as black rot, mixed rot, etc., and most of the eggs contained blood rings, then, in such case, you should find the defendant guilty as charged in the information.

"Now, gentlemen, as has been suggested heretofore there is only one little simple question in this case, and that is, whether or not the eggs that, according to the testimony of both the plaintiff and the defendant, were shipped, the eggs shipped from Lorimor, in the State of Iowa, on the thirtieth day of July, 1923, were adulterated when they were offered for shipment, or when they were shipped. That is the one question to determine. If you find they were adulterated when offered for shipment or when they were shipped, then, gentlemen, it will be your duty to render a verdict of guilty in this case.

"If, on the other hand, you believe they were not adulterated when offered for shipment, or shipped, and if they afterwards became decomposed, that many of them contained mixed rots, black rots, or blood rings, or became moldy, as the testimony tends to show, then under such circumstances the defendant is not guilty of shipping or offering for shipment.

"There is testimony, and the court is briefly referring to that, in effect that when the eggs arrived in Chicago on the eighth day of August, 1923, some eight or nine days after they were shipped from Lorimor, the testimony is that they were not then adulterated. On the other hand, there is testimony on the part of the Government that on that day they were adulterated, and there is testimony tending to show that if the eggs had not been adulterated when shipped, because of the refrigeration conditions they would not have become adulterated, they wouldn't have deteriorated in the course of shipment. The defendant on his part says that he made an inspection of this shipment of eggs after they gathered them up in the country, and, in substance, if they were adulterated when offered for shipment the defendant denies he had any such knowledge. The court, under this status, is constrained to say that it is not a question or whether or not he had knowledge of their adulteration, or it is not a question of whether or not he made reasonable, proper, and careful inspection to determine whether or not they were adulterated. Under this law as the court interprets it, the defendant is responsible if he ships adulterated eggs regardless of what he may have done to ascertain whether or not they were adulterated. So, in this case, if you should determine from the testimony that the defendant shipped or offered for shipment adulterated eggs, on or about the thirtieth day of July, 1923, then, gentlemen, it will be your duty to return a verdict of guilty in this case.

"You gentlemen, in retiring to your jury room to deliberate on your verdict, should consider your verdict in this case. You should bear in mind that there will be no question of the effect on the Government or the defendant with reference to your verdict in so far as the effects are concerned. If the defendant is guilty of having offered for shipment or shipped adulterated eggs in violation of this law, then it is your duty to return a verdict of guilty regardless of the effect upon him. If, on the other hand, you find that the defendant did not offer for shipment and did not ship adulterated eggs, then it is your duty to return a verdict of not guilty. The fact that they may have been adulterated when shipped or may have been adulterated somewhere else it is your duty to determine from the testimony in the case, and then return your verdict in the case, expressive of what you concede to be true in the case under your oaths and qualifications of that duty, because your responsibility as men demands that you do that, and without question for or against anybody. When you have done that, it is your full duty.

"The court will give you these fundamental rules enabling you to analyze the testimony in the case.

"In the first place, you are the sole judges of the witnesses and the weight to be accredited to their testimony, of each and every witness who testified in this case. In determining the weight and credibility you should give the testimony of any witness, you should take into consideration his conduct and demeanor on the witness stand, his willingness or unwillingness to testify to what he is asked about, his knowledge of the facts, and the reasonableness or unreasonableness of his testimony, his interest, if any, in the result of the case, his bias or prejudice for or against any of the parties in the case, and any other facts or circumstances that may tend to throw light on such witnesses' testimony, and if you should find any witness has willfully sworn falsely to any matter or fact in the case you have a right to disregard all or any part of it and you may believe any part.

"The defendant testified in his own behalf. He is a competent witness. And you should take into consideration the fact that he is the defendant, and is on trial. The law presumes that he is innocent and not guilty. This presumption protects the defendant throughout the trial, until the Government has proven his guilt to your satisfaction, beyond a reasonable doubt. Now, while reasonable doubt does not mean notions, it means, as the word implies, a substantial doubt; that is, a doubt founded on reason, and one that would cause a reasonable, prudent man to hesitate before acting, and such a doubt as may arise on the testimony or from the lack of testimony. After all is said and done if it should exist in your mind, that is, a reasonable doubt as to the innocence or guilt of the defendant, it would be your duty to give the defendant the benefit of such doubt and acquit him."

A verdict of "not guilty" was returned by the jury.

R. W. DUNLAP, *Acting Secretary of Agriculture.*

**14120. Adulteration and misbranding of spirits of camphor and nitrous ether. U. S. v. 3 Barrels of Spirits of Camphor and 3 Barrels of Nitrous Ether. Default decree of condemnation, forfeiture, and destruction.** (F. & D. Nos. 20637, 20638. I. S. Nos. 939-x, 940-x. S. No. W-1656.)

On November 21, 1925, the United States attorney for the Western District of Washington, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel praying the seizure and condemnation of 3 barrels of spirits of camphor and 3 barrels of nitrous ether, remaining in the original unbroken packages at Seattle, Wash., alleging that the articles had been shipped by the Barclay Chemical Corp., from New York, N. Y., about September 9, 1925, and transported from the State of New York into the State of Washington, and charging adulteration and misbranding in violation of the food and drugs act.

Analysis by the Bureau of Chemistry of this department of samples of the articles showed that each of the articles contained alcohol and acetone, indicating that they had been prepared with specially denatured alcohol.

Adulteration of the articles was alleged in the libel for the reason that they were sold under names recognized in the United States Pharmacopœia, and differed from the pharmacopœial standards of strength and quality and purity, and their own standards of strength, purity, and quality were not stated upon the containers thereof.

Misbranding was alleged for the reason that the articles were imitations of and offered for sale under the names of other articles, and for the further reason that the packages failed to bear a statement on the label of the quantity or proportion of alcohol contained therein.

On February 12, 1926, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the products be destroyed by the United States marshal.

R. W. DUNLAP, *Acting Secretary of Agriculture.*

**14121. Adulteration and misbranding of butter. U. S. v. 18 Cases and 13 Cases of Butter. Consent decrees of condemnation and forfeiture. Product released under bond.** (F. & D. Nos. 20384, 20406. I. S. Nos. 5717-x, 5718-x, 5720-x. S. Nos. E-5382, E-5383.)

On August 20 and 27, 1925, respectively, the United States attorney for the Western District of Pennsylvania, acting upon reports by the Secretary of Agriculture, filed in the District Court of the United States for said district libels praying the seizure and condemnation of 31 cases of butter, remaining in the original unbroken packages at Pittsburgh, Pa., alleging that the article had been shipped by the Paul A. Schulze Co., from St. Louis, Mo., in part